46 Am. Jur. 2d Judges § 196

American Jurisprudence, Second Edition | February 2022 Update

Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

4. Hearing, Determination, and Appeal

§ 196. Prior rulings and other conduct as evidence of prejudice and bias of judge

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West's Key Number Digest

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Disqualification of Judge for Having Decided Different Case Against Litigant—State Cases, 85 A.L.R.5th 547

Disqualification of a judge on grounds of bias or prejudice may not be based on rulings made by the judge in the case at hand,[1] or on adverse rulings by the judge,[2] whether the rulings are correct or incorrect.[3] That the trial judge has been reversed on appeal is insufficient to show bias[4] or to show that the judge cannot follow the directives of the appellate court or treat the defendant fairly.[5]

Generally, what a judge learns in the judge's judicial capacity is a proper basis for judicial observations, and the use of such information should not result in disqualification.[6] A judge's expressions of opinion, uttered in what the judge conceives to be the discharge of judicial duty, are not evidence of prejudice.[7] Nor can bias be shown from actions of the trial judge which merely are attempts either to further the progress of the trial or to clarify the testimony.[8]

A judge will not be disqualified on the basis of the judge's judicial views in prior litigation involving similar issues.[9]

Rulings and other judicial conduct, however, have sometimes been relied upon as some evidence of bias, such as where a judge sentenced a defendant in a prior criminal case,[10] or where, during prior proceedings of the matter, bitterness was engendered between the judge, attorneys, and parties.[11] For instance, remarks of a hearing justice in proceedings on a report of a probation violation demonstrated bias or prejudice, such that the justice was required to recuse from the hearing, where, before the violation hearing had begun, the justice expressed a blunt and unequivocal belief that the probationer needed to be "warehoused" and was "beyond rehabilitation"; the fact that the justice expressed such views prior to the commencement of the violation hearing displayed an inability to render a fair judgment.[12]

A litigant may be entitled to a new trial where the judge shows by actions immediately following the trial that the judge has been prejudiced against the litigant.[13]

Footnotes

1 Peterson v. McKinley, 45 Haw. 44, 361 P.2d 60, 92 A.L.R.2d 301 (1961).

2 N.L.R.B. v. Baldwin Locomotive Works, 128 F.2d 39 (C.C.A. 3d Cir. 1942).

3 Perotti v. State, 806 P.2d 325 (Alaska Ct. App. 1991).

4 People v. Upshaw, 172 Mich. App. 386, 431 N.W.2d 520 (1988); People v. Harris, 145 A.D.2d 435, 535 N.Y.S.2d 397 (2d Dep't 1988).

5 State v. Whitaker, 110 N.M. 486, 1990-NMCA-014, 797 P.2d 275 (Ct. App. 1990).

6 Tharpe v. State, 262 Ga. 110, 416 S.E.2d 78 (1992) (comment by the trial judge that the judge knew something of a juror's background that would make such juror good for the defense, though inappropriate, was not sufficient to require recusal).

7 Shakin v. Board of Medical Examiners, 254 Cal. App. 2d 102, 62 Cal. Rptr. 274, 23 A.L.R.3d 1398 (2d Dist. 1967).

8 In re Marriage of Randall, 157 Ill. App. 3d 892, 110 Ill. Dec. 122, 510 N.E.2d 1153 (1st Dist. 1987).

9 Denis v. Perfect Parts, Inc., 142 F. Supp. 259 (D. Mass. 1956).

10 People v. Lagardo, 82 Ill. App. 2d 119, 226 N.E.2d 492, 21 A.L.R.3d 1360 (1st Dist. 1967).

11 Payne v. Lee, 222 Minn. 269, 24 N.W.2d 259 (1946).

12 State v. Howard, 23 A.3d 1133 (R.I. 2011).

13 State v. Nunes, 99 R.I. 1, 205 A.2d 24 (1964).

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